April 13, 2001

D.T.E. 00-110-C

Petition of Western Massachusetts Electric Company for Approval of Changes to its Rate Tariffs Effective January 1, 2001.

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ORDER ON MOTION OF WESTERN MASSACHUSETTS

INDUSTRIAL CUSTOMERS GROUP TO RECONSIDER AND STAY

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## I. INTRODUCTION

On January 18, 2001, the Western Massachusetts Industrial Customers Group ("WMICG") filed a motion ("Motion") with the Department of Telecommunications and Energy ("Department") seeking reconsideration and a stay[(1)] of the Department's Orders in Western Massachusetts Electric Company, D.T.E. 00-110 (December 29, 2000), and Western Massachusetts Electric Company, D.T.E. 00-110-A (January 4, 2001), as well as an extension of the judicial appeal period. Western Massachusetts Electric Company ("WMECo" or "Company") filed an opposition to the Motion on January 25, 2001 ("Opposition"). WMICG filed a reply to WMECo's Opposition on January 31, 2001 ("Reply").[(2)]

## II. PROCEDURAL HISTORY

On December 6, 2000, WMECo filed with the Department a request to change its rates for electricity consumed on and after January 1, 2001.[(3)] WMECo's rate proposal consisted of two adjustments. First, WMECo proposed to increase its standard offer service rate to the level of its current supply costs and to treat the increase as a standard offer service fuel adjustment surcharge. Second, WMECo proposed to mitigate the bill increase to its customers by reducing its non-standard offer service rate components

related to stranded cost recovery, conservation and renewables. The filing was docketed as D.T.E. 00-110.

On, December 13, 2000, the Department issued a notice and requested comments from all participants in Western Massachusetts Electric Company, D.T.E. 97-120 (1999) and Western Massachusetts Electric Company, D.T.E. 00-33. Comments were received from the Attorney General of the Commonwealth of Massachusetts ("Attorney General"), WMICG[(4)] and Temple Beth-El. The Company responded to two sets of information requests issued by the Department on December 15, 2000 and December 21, 2000.

On December 29, 2000, the Department issued an Order rejecting WMECo's proposed adjustments to its distribution rates. Western Massachusetts Electric Company,

D.T.E. 00-110 (2000). The Company was ordered to submit a compliance filing, consistent with the standard offer service fuel adjustment mechanism authorized for the other distribution companies in D.T.E. 00-66, D.T.E. 00-67 and D.T.E. 00-70. D.T.E. 00-110, at 6,

citing Standard Offer Service Fuel Adjustments, D.T.E. 00-66, D.T.E. 00-67, D.T.E. 00-70, Letter Order (December 4, 2000). The Company was also directed to maintain its current distribution rate charges and to remove congestion charges from its default service and standard offer service rates. Id. at 6-7. The Company made its compliance filing on

January 3, 2001.

On January 4, 2001, the Department found revised tariffs M.D.T.E. Nos. 1000G, 1034B, 1001G, 1035B, 1002G, 1003G, 1004G, 1005G, 1006G, 1007G, 1008G, 1009H, 1010H, 1013G, 1015E and 1026F, for service on and after January 1, 2001, were in compliance with Department precedent and, therefore, allowance was in the public interest. Western Massachusetts Electric Company, D.T.E. 00-110-A at 2 (2001) citing Western Massachusetts Electric Company, Letter Order (December 17, 1999); Standard Offer Service Fuel Adjustment, D.T.E. 00-66, 00-67, 00-70, Letter Order (December 4, 2000). The rate changes were allowed subject to reconciliation pursuant to the Department's investigation of the Company's next reconciliation filing.[(5)] Id.

## III. POSITIONS OF THE PARTIES

### A. Western Massachusetts Industrial Customers Group

WMICG argues that because WMECo did not have a fuel adjustment provision in either its tariffs or restructuring plan, the approval of a fuel adjustment is a new rate that requires a public hearing after notice pursuant to G.L. c. 164, § 94 (Motion at 4, Reply at 1, 4). Similarly, WMICG argues that the Company's change in bundled Rate PR is a general rate increase requiring notice and hearing (Motion at 4-5, Reply at 1, 4). WMICG contends that its due process rights were violated because the Department did not adhere

to the statutory notice requirements of G.L. c. 164, § 94 and requests that the Department reopen the proceeding after notice for a hearing (Motion at 4-5).

WMICG further argues that, in approving the fuel adjustment, the Department failed to adjust the Consumer Price Index ("CPI") inflation factor to account for the fact that the CPI already includes a factor for energy inflation (id. at 5).[(6)] Based on these "undisclosed facts," WMICG argues that the Department should reconsider its Order in D.T.E. 00-110 and require the rates be reduced by the percentage of the CPI increase for energy (id.). WMICG also requests that the Department reconsider its approval of rates PR and T-2, arguing that the Company has failed to demonstrate that it has met the required 15 percent inflation-adjusted rate reduction requirement set forth in G.L. c. 164, § 1B(b) (id. at 5-6).

WMICG argues that a stay is necessary pending resolution of its Motion in order to prevent "irreparable injury" to rate T-2 and PR customers and to correct due process defects (Motion at 6-7, Reply at 2). Finally, WMICG requests an extension of the judicial appeal period of ten days from the Department's final Order on its Motion (Motion at 7).

B. Western Massachusetts Electric Company

WMECo argues that there is no basis in law or in the Department's regulations to grant WMICG's requests for reconsideration or stay (Opposition at 1). WMECo argues that WMICG has not met the standard of review for reconsideration, and instead is attempting to relitigate issues already considered and decided by the Department (id. at 9). WMECo argues that, in considering its request for a fuel increase, the Department employed a procedure intended to safeguard due process rights (id. at 10). WMECo states that WMICG has already raised its due process arguments in its December 21, 2000 comments, which were considered and rejected by the Department (Opposition at 10, citing D.T.E. 00-110, at 3-4). Similarly, WMECo contends that WMICG previously commented on the propriety of rates PR and T-2, and that these rates were amended, in part, to meet WMICG's concerns (Opposition at 10). In addition, WMECo states that the CPI data offered by WMICG is not a proper basis for reconsideration, arguing that the Department was aware that the CPI includes the full market basket of inflation categories, including fuel (id. at 12).

WMECo argues that WMICG has also failed to provide sufficient support for its assertion that irreparable harm will result if a stay is not granted (id. at 7). Instead, WMECo argues that irreparable harm may result if a stay is granted (id.). For example, WMECo argues that a stay would result in increased fuel cost deferrals that could cause its cost of borrowing to increase (id.). Finally, arguing that WMICG did not file its Motion until the last day a judicial appeal could be brought, WMECo requests that the Department deny WMICG's request for an extension of the judicial appeal period (id. at 13).

IV. STANDARD OF REVIEW

The Department's procedural rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company,

D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company,

D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

## V. ANALYSIS AND FINDINGS

The Department's standard for reconsideration is well-established. A party must show that extraordinary circumstances require that the Department take a fresh look at the record. A motion for reconsideration should bring forth previously unknown or undisclosed facts which would have a significant impact upon the decision already rendered. A party may not seek to reargue issues argued and considered. We will also consider a motion for reconsideration when our treatment of an issue is arguably the result of mistake or inadvertence.

WMICG's motion for reconsideration is based on three claims: (1) that reconsideration of the Department's Orders is necessary to correct due process defects, (2) that reconsideration of the Department's Orders is necessary in light of "undisclosed facts" regarding the CPI index, and (3) that reconsideration of the Department's Orders is necessary to maintain compliance with the rate reduction requirements of the Restructuring Act. With respect to WMICG's claim that D.T.E. 00-110 and D.T.E. 00-110-A must be reconsidered based on due process considerations, WMICG has failed to meet our standard for reconsideration. While the Department has in limited

circumstances granted reconsideration for the specific purpose of correcting due process defects, there is no due process defect in the present case. See e.g. CTC Communications Corp., D.T.E. 98-18-A (1998).

WMICG argues that the Department did not give proper notice and did not hold a public hearing before the adoption of a standard offer service fuel adjustment for WMECo and that such failure amounted to a denial of its due process rights. WMICG is incorrect. Statute 1997, c. 164, § 239, left G.L. c. 164, § 94G (the fuel adjustment clause) in place but supplemented it with a new subsection (g), authorizing the Department to put in place an alternative process for periodic fuel adjustments to electric rates. After notice on November 2, 2000, and hearing on November 16, 2000, the Department issued its Order in Standard Offer Service Fuel Adjustment, D.T.E. 00-66, 00-67, 00-70. That Order recognized and implemented a standard offer service fuel adjustment under those companies' restructuring settlements and plans as compliant with the Restructuring Act. We merely apply that ruling here. WMECo testified at this public hearing about its standard offer service fuel adjustment requirements. See D.T.E. 00-66, 00-67, 00-70, Tr. at 48-50 (November 16, 2000). After a detailed review and investigation of the fuel price increases, the Department adopted a uniform standard offer service adjustment mechanism for the other distribution companies on December 4, 2000. D.T.E. 00-66, 00-67, 00-70, Letter Order at 3-4. The Department found that the adoption of this uniform mechanism was both in the public interest and, more importantly, consistent with the requirements and informing equitable purposes of the Restructuring Act. Id. Although the Company here requested a different adjustment mechanism in its initial filing, the Department approved the same, uniform standard offer service fuel adjustment mechanism for WMECo as it did for the other distribution companies. D.T.E. 00-110, at 6. "Reasoned consistency" counsels that applying the same fuel adjustment mechanism for all companies comports with the intent of G.L. c. 164, § 94G (g). Boston Gas Company v. Department of Public Utilities, 367 Mass. 92, 94 (1975).

Further, neither the approval of a standard offer service fuel adjustment nor the Company's adjustment to the energy charges in rate PR amount to a general rate increase triggering the formal notice and public hearing requirements of G.L. c. 164, § 94.[(7)] After the passage of the Restructuring Act, the notice and public hearing requirements of G.L. c. 164,

§ 94 no longer apply to the rates for generation supply. Although allowing standard offer or default service to be included in overall rates, the Department no longer regulates the generation component of overall rates as a "cost of service" subject to the requirements of G.L. c. 164, § 94. While the Department does not regulate the generation component of overall rates, the Department does have discretion to determine how generation supply costs are recovered and to review, approve, or reject proposed default service and standard offer service prices. This review is not done pursuant to traditional "cost of service" standards and requirements under G.L. c. 164, § 94. In this determination, the Department balances recovery of costs on a current basis with accumulation of unrecovered costs to be collected later, with interest. See

D.T.E. 00-66, 00-67, 00-70, at 11. In the present case, the Department allowed for the recovery of a fuel component of WMECo's standard offer supply solicitation resulting from recent increases in fuel costs. In addition, WMECo's approved restructuring plan allows it to solicit standard offer supply on an annual basis. D.T.E. 97-120, at 190. By its very nature, an annual solicitation implies that the generation component of overall rates may and likely will change annually. In this instance, a component of the generation supply costs has been identified as a fuel adjustment for purposes of calculating compliance with the rate reduction requirements of the Restructuring Act.

In addition, WMICG cannot show that the Department's efforts to adjust standard offer service rates in a way that is equitable to all customers has either harmed or prejudiced WMICG in any way. The Department held extensive proceedings with respect to the standard offer service fuel adjustments, not only in this proceeding, but also in D.T.E. 00-66, 00-67, and 00-70. WMICG asks us, in essence, to elevate its claims of process over the substance of the Restructuring Act's equitable purpose that all customers both share the benefits and bear the burdens of the move toward competitive generation. The Department, however, must be able to balance the additional process of another public hearing with the delay caused by the accompanying notice requirements. As long as fundamental due process rights are maintained, the Department has the discretion to fashion an appropriate process for its investigations. In times of such high fuel price inflation, resort to a time-consuming rate investigation before permitting the adjustment of rates to account for rapidly rising costs threatens the utilities' financial viability and distribution reliability. The Restructuring Act requires electric companies to competitively procure standard offer service supplies. It would be confiscatory to require electric companies to incur these costs and not allow recovery. The procedure employed in the present case balanced these concerns, while ensuring that fundamental due process rights were maintained. The process also respects and effectuates the Restructuring Act's basic assumption that regulation strive to be as nimble as the marketplace in addressing something as dynamic as competitive contract arrangements.

The fundamental elements of due process are notice and an opportunity to be heard. See Mullane v. Central Hanover Bank & Trust Co., et al., 339 U.S. 306, 314 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"). WMICG had actual notice of WMECo's request for a standard offer service fuel adjustment, as it is a member of the service list for WMECo's restructuring proceeding,

D.T.E. 97-120. Notice of WMECo's filing and a request for comments was sent to all participants in this proceeding. See D.T.E. 00-110, Notice of Filing and Request for Comments (December 13, 2000). WMICG has had an adequate opportunity to be heard. WMICG filed comments on December 21 and 28, 2000 (see WMICG December 21, 2000 Comments; WMICG December 28, 2000 Comments). Moreover, WMICG first raised its questions with respect to due process in its December 21 and 28, 2000 comments (WMICG December 21, 2000 Comments at 4; WMICG December 28, 2000

Comments at 2). WMICG had sufficient opportunity to question WMECo's standard offer service fuel adjustment increase, both procedurally and substantively satisfying any due process requirements. WMICG does not show that, even with additional process, extraordinary circumstances exist sufficient to dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. Therefore, WMICG's motion to reconsider on this ground must be denied.

With respect to WMICG's claim that D.T.E. 00-110 and D.T.E. 00-110-A must be reconsidered in light of undisclosed facts regarding the inclusion of fuel costs in the CPI index, WMICG has again failed to meet our standard for reconsideration. At the direction of the Department, WMECo and the other electric distribution companies have used the CPI since 1999 to measure inflation for the purposes of calculating their inflation-adjusted rates. See e.g. Western Massachusetts Electric Company, Letter Order Re: Implementation of the 15 Percent Rate Reduction (August 19, 1999).

WMICG had the opportunity to comment on the CPI issue in this proceeding, but did not do so. The CPI index used by WMECo is identical to the index used by the other distribution companies. In determining the uniform standard offer service fuel adjustment mechanism, the Department considered the issue of the inclusion of fuel costs in the CPI. For example, when asked whether it should adjust its CPI for fuel costs, Massachusetts Electric Company ("MECo") said no, arguing: "[o]n a practical level, CPI has many varied components. At any time, prices for some components are rising while prices for other components are falling. . . . Thus fuel costs increases can be offset by concurrent reductions in other prices and never result in fully corresponding adjustment to the CPI." D.T.E. 00-67, MECo Response to Information Request DTE-DOER-2.

While it may have been unknown to WMICG, the Department has been aware since the adoption of the CPI as an inflation-measure that it contained a certain, small component for energy. As part of our approval of the standard offer service fuel adjustment mechanism adopted by WMECo and the other distribution companies, we determined that it was appropriate to adjust rates for inflation as measured by the CPI, and have a separate adjustment or fuel index prices without removing fuel costs from the CPI. In addition, the Department has previously determined that the Act's inflation adjustment should be interpreted in terms of prices paid by customers and not in terms of the rate of change of the cost to supply electricity. D.T.E. 00-66, 00-67, 00-70, at 14. With full knowledge and consideration of the fact that the CPI contained a certain component for fuel, the Department found that it was appropriate for WMECo and the other distribution companies to account for the substantial increases in fuel costs apart from the inflation-adjusted rate reduction requirements of the Restructuring Act. D.T.E. 00-110, at 5. As WMICG cannot demonstrate any previously unknown facts that would have a significant impact on the decisions rendered in this proceeding, its motion for reconsideration on these grounds must be denied.[(8)]

Finally, with respect to WMICG's claim that D.T.E. 00-110 and D.T.E. 00-110-A must be reconsidered because rates T-2 and PR do not meet the 15 percent rate reduction

requirements of the Restructuring Act, WMICG has failed to meet our standard for reconsideration. The Department has already considered and determined these issues and WMICG has failed to present new evidence or demonstrate that the Department's ruling was based on mistake or inadvertence.

WMICG previously raised these issues in its comments filed on December 21 and 28, 2000 (WMICG December 21, 2000 Comments at 4; WMICG December 28, 2000 Comments at 1-2). After full consideration, we found that M.D.T.E. Nos.1008G (rate T-2) and 1013G (rate PR) were in compliance with Department precedent and that allowance of these rate changes, subject to reconciliation pursuant to the Department's investigation of the Company's next reconciliation filing, was in the public interest. D.T.E. 00-110-A at 2.

The Company's compliance filing contained rate tariff PR that was consistent with our directives in D.T.E. 00-110. Although the Company's compliance filing did not include a worksheet to demonstrate that rate PR complied with the rate reduction requirements of the Act, information contained in the Company's filing compared to the inflation-adjusted August 1997 rates showed that every rate component billed to the PR rate class met the requirements of the Act.[(9)] In addition, the Company demonstrated that rate PR complied with the rate reduction requirements of the Act in response to an information request issued by WMICG at the January 5, 2001 technical session (Company Response to IR-WMICG-9).

While WMICG may not agree with the Department's determination that the standard offer service fuel adjustment should be treated outside of the rate reduction requirements of the Act, the Company in its compliance filing demonstrated that each rate component of rate T-2 met the required rate reductions. Although rate T-2 customers will receive more than the Company average increase, it is because their consumption is energy-intensive and the increase in rates was primarily caused by increased fuel costs, which are collected through the energy charge. As WMICG cannot show that our ruling was based on mistake or inadvertence, its motion to reconsider on this ground must be denied.

With respect to WMICG's request for a stay of the approval of tariffs M.D.T.E.

Nos. 1008G (rate T-2) and 1013G (rate PR) pending a resolution of the motion for reconsideration, neither "the enabling statutes nor the Department's procedural rules provide explicitly for a stay pending reconsideration of a Department order." Bell Atlantic Massachusetts, D.T.E. 97-116-B at 10 (1999); CTC Communications Corp., D.T.E. 98-18-A at 4. The Department's authority for considering a stay pending appellate review is presented in G.L. c. 30A, § 14(3).[(10)] The factors that the Department will consider in determining whether such a stay is warranted are: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal, (2) the likelihood that the moving party will be harmed irreparably absent a stay, (3) the prospect that others will be harmed if the Department grants the stay, and (4) the public interest in granting the stay. Boston Edison Company, D.P.U. 92-130-A at 7 (1993); citing Cuomo v. United States Regulatory Commission, 772 F.2d 972, 974 (C.A.D.C. 1985). On a motion for stay, it is

the moving party's obligation to justify the Department's exercise of such an extraordinary remedy. Id.

In determining the likelihood of WMICG's success on the merits of its appeal, we cannot determine whether WMICG has made out a substantial case on the merits since no appeal has yet been filed. However, in D.T.E. 00-110 and D.T.E. 00-110-A, we fully considered all of WMICG's arguments and found that allowance of a standard offer service fuel adjustment was consistent with the Restructuring Act and that allowance of revised tariffs M.D.T.E. Nos.1008G and 1013G was in the public interest. D.T.E. 00-110, at 4-5;

D.T.E. 00-110-A at 2. In the present motion for reconsideration, WMICG has presented no information that would require us to change our conclusion. Therefore, we find that there is no substantial likelihood that WMICG will prevail on the merits of an appeal of

D.T.E. 00-110 or D.T.E. 00-110-A.

Regarding the harm to WMICG if the stay is not granted, we recognize that absent a stay, there is a risk that a small number of customers on rates T-2 and PR could suffer harm if the Department's Orders in D.T.E. 00-110 and 00-110-A are subsequently overturned. However, we must balance this potential harm with the probability that absence of the requested stay will be harmful to other parties. One important reason why the Department approved the request of WMECo to adjust its standard offer service rates was to prevent the substantial likelihood of harm from increased fuel cost deferrals. D.T.E. 00-110, at 5. Costs that are not recovered from standard offer service customers now, will be recovered, with interest, from all customers in the future regardless of whether the customers receive standard offer service or not. The harm to that mass of customers of allowing WMICG's members to escape present payment of costs incurred to serve them now, and to push those costs onto the class of all customers, is a certain, not a speculative harm. Granting the stay will cause WMECo to defer standard offer costs. For example, it will cost WMECo 7.258 cents per kilowatt hour ("KWH") to provide standard offer service, but if we grant the stay the Company will only be permitted to charge its T-2 customers 4.557 cents per KWH. D.T.E. 00-110, Compliance Filing at Att. 2. Deferred costs are collected from all standard offer customers.[11] It is not equitable for future customers to pay higher rates in order to allow today's standard offer service customers to pay prices that are significantly below cost. Also, without a recognition of fuel cost increases, there is a real risk that the total amount of costs deferred by WMECo will grow to a level that could threaten its financial viability and risk the reliability of its distribution system. Id.

Finally, in this instance, we do not find that this case presents such complex legal issues to require the Department to stay our final Orders pending appellate review. For these reasons, we find that the balance of the equities or the public interest does not require granting WMICG's request for a stay.

With respect to WMICG's request to extend the judicial appeal period, G.L. c. 25,

§ 5 provides, in pertinent part, that an appeal of a Department final order must be filed with the Department no later than 20 days after service of the order "or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said . . . decision or ruling." See also 220 C.M.R. § 1.11(11). The 20-day appeal deadline indicates a clear intention on the part of the Legislature and the Department to ensure that the decision of an aggrieved party to appeal a final order of the Department be made expeditiously. Swift judicial review benefits both the appealing party and other parties, and serves the public interest by promoting the finality of Department orders. Nunnally, D.P.U. 92-34-A at 4 (1993).

The Department's procedural rules state that reasonable extensions of the appeal period shall be granted upon a showing of good cause. 220 C.M.R. § 1.11(11). The filing of a contemporaneous motion for reconsideration does not, by itself, constitute good cause for an extension of the appeal period. See New England Telephone, D.T.E. 93-125-A at 14 (1994). In regards to determining what does constitute good cause, the Department has stated:

Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

Boston Edison Company, D.P.U. 90-335-A at 4 (1992).

WMICG argues that a ten-day extension of the judicial appeal period should be granted because the Department's decision on its motion to reconsider may render an appeal unnecessary (Motion at 7). Alternatively, WMECo urges us to deny the request for an extension because WMICG filed its motion on the last day of the appeal period (Opposition

at 13). The filing of its request to extend the judicial appeal period operated to toll the appeal period for WMICG until the Department ruled on the Motion. Nandy, D.P.U. 94-AD-4-A

at 6, n.6; Nunnally, D.P.U. 92-34-A at 6, n.6. However, it does not automatically ensure that the Department will "reset the clock" by granting the extension.

Applying the balancing described in D.P.U. 90-355-A, WMICG has not shown good cause for a ten-day extension. However, because WMICG filed its motion on the last day of the appeal period, it would have no time to file an appeal if the Department were to

deny its request for an extension. As a matter of practice, the Department normally allows parties a few days in which to prepare an appeal even when our ruling comes after the appeal period would otherwise have expired. Nextel Communications, Inc., D.P.U. 99-59-B/95-80/

95-112/96-13, at 7, Order on Appeal of Hearing Officer Ruling and Motion for Extension of Appeal (June 7, 1999). To do otherwise would effectively require parties to file both an appeal and extension request simultaneously in order to preserve their appeal rights in the event that the Department did not issue a ruling prior to the expiration of the appeal period. Id. at 8. Under the circumstances of this case, we find that it would not unreasonably delay the finality of this proceeding nor prejudice any parties if we were to grant WMICG a brief extension of the appeal period. While we will allow an extension of time for appeal, we will not grant the full ten days as requested by WMICG. WMICG will have five business days from the date of this Order to file any appeal of D.T.E. 00-110 or D.T.E. 00-110-A.

VI. ORDER

After review and consideration, it is

ORDERED: That the Motion of the Western Massachusetts Industrial Customers Group for Reconsideration and Stay of the Department's Orders in D.T.E. 00-110 and

D.T.E. 00-110-A, is DENIED; and it is

FURTHER ORDERED: That the Motion of the Western Massachusetts Industrial Customers Group for an Extension of the Judicial Appeal Period is GRANTED, as modified, and it is

FURTHER ORDERED: That the time within which the Western Massachusetts Industrial Customers Group may appeal D.T.E. 00-110 and D.T.E. 00-110-A is extended until five business days from the date of this Order.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. WMICG has requested a stay of D.T.E. 00-110 and D.T.E. 00-110-A only as applicable to tariffs M.D.T.E. Nos. 1008G (rate T-2) and 1013G (rate PR) (Motion

at 2). Rate T-2 is WMECo's largest commercial and industrial rate. Rate PR is for commercial and industrial customers that also take firm back-up, maintenance and supplemental service.

2. The Department's procedural rules provide that any party may file a written answer to a motion within five days of the filing of such motion. 220 C.M.R. § 1.04(5)(c). Our rules do not, however, provide for the filing of any further pleadings regarding a motion. Any party seeking to file a reply or other comment regarding a written answer to a motion must first move for leave to file such a pleading. The Department will consider WMICG's

Reply in this instance, although it was filed without leave. All future like pleadings filed without leave will not be considered.

3. WMECo's request was made according to the Department's Order in Standard Offer Service Fuel Adjustments, D.T.E. 00-66, D.T.E. 00-67, D.T.E. 00-70, Letter Order (December 4, 2000) (WMECo Filing at 1). In these earlier proceedings, the Department established a common mechanism to adjust standard offer service rates as a result of substantial increases in fuel costs which have driven up the price of electric generation. See D.T.E. 00-66, D.T.E. 00-67, D.T.E. 00-70, at 10-15.

4. WMICG filed comments on December 21, 2000 ("WMICG December 21, 2000 Comments") and on December 28, 2000 ("WMICG December 28, 2000 Comments").

5. Revised tariffs M.D.T.E. Nos. 1011G and 1012G for interruptible service were not addressed in D.T.E. 00-110-A. On January 2, 2001, WMICG filed comments requesting that no new rates for interruptible customers be approved until

customer-specific bill impacts were provided by the Company and an adjudicatory hearing was held (WMICG January 2, 2001 Comments at 1-2). The Department held a technical session regarding revised tariffs M.D.T.E. Nos. 1011G and 1012G on January 5, 2001. The Company, the Attorney General and WMICG participated in this session. On January 10 and January 12, 2001, the Company responded to information requests issued by the Department and WMICG.

For Rates I-1 and I-3, the Company provided schedules showing that the proposed charges, excluding the approved fuel adjustment mechanism, met the 15 percent rate reduction requirement of the Electric Industry Restructuring Act, St. 1997, c. 164,

§ 1B(b) ("Restructuring Act" or "Act"), based on August 1997 rates adjusted for inflation (Company Response to Information Request WMICG-IR-1-9). In addition, the Company provided bill impact analyses that included the approved fuel adjustment mechanism for the two customers on Rate I-1 and the five customers on Rate I-3 (Company Response to Information Request WMICG-IR-1-8). On January 18, 2001, the Department approved revised tariffs M.D.T.E. Nos. 1011G and 1012G for interruptible service, subject to reconciliation. Western Massachusetts Electric Company, D.T.E. 00-110-B at 4 (2001). WMICG has not moved to reconsider the Department's Order in D.T.E. 00-110-B and is beyond the time to do so.

220 C.M.R. § 1.11(10).

6. In support of its argument, WMICG submitted an affidavit from economic consultant Mark Drazen (Motion at Att. 1).

7. Section 94 provides that "(w)henever the department receives notice of any changes proposed to be made in any schedule filed under this chapter which represent a general increase in rates, prices and charges for gas or electric service, it shall notify the attorney general of the same forthwith, and shall thereafter hold a public hearing and make an investigation as to the propriety of such proposed changes after first causing notice of the time, place and the subject matter of such hearing to be published at least twenty-one days before such hearing in such local newspapers as the department may select. . . ." G.L. c. 164, § 94.

8. The irony is, of course, WMICG's argument in favor of present non-collection of increased fuel costs is that cost caused by service to WMICG's members would, in all likelihood, be deferred until that later reconciliation and recovered from the whole body of customers irrespective of rate class. The Restructuring Act does not contemplate such an inequity, and we are loath to ascribe so inequitable a result to Legislative purpose. See Massachusetts Electric Company, D.P.U. 96-25 (1997), Boston Edison Company, D.P.U. 96-23 (1998), Cambridge Electric Light Company and Commonwealth Electric Company, D.T.E. 97-111 (1998), Fitchburg Gas and Electric Light Company, D.T.E. 97-115/98-120 (1999).

9. In D.T.E. 00-66, 00-67 and 00-70, the Department determined that the standard offer service fuel adjustment falls outside of the rate reduction requirements of the Act. D.T.E. 00-66, 00-67, 00-70, at 13.

10. "The commencement of an action shall not operate as a stay of enforcement of the agency decision, but the agency may stay enforcement, and the reviewing court may order a stay upon such terms as it considers proper." G.L. c. 30A, § 14(3).

11. Generally, when a distribution company does not recover all of its costs to supply standard offer service, the deficiencies are accumulated with interest in an account and are recovered by implementing a uniform cents per KWH surcharge on the rates for standard offer service. Any under-recoveries that remain after the standard offer period ends are recovered from all retail delivery customers through a uniform surcharge. See Massachusetts Electric Company, D.P.U. 96-25 (1997); Boston Edison Company, D.P.U. 96-23 (1998); Cambridge Electric Light Company and Commonwealth Electric Company; D.T.E. 97-111 (1998); Fitchburg Gas and Electric Light Company, D.T.E. 97-115/98-120 (1999); Western Massachusetts Electric Company, D.T.E. 97-120 (1999).